

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

KRISTOPHER ADAM CARTER,
Petitioner.

No. 2 CA-CR 2018-0237-PR
Filed November 7, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Petition for Review from the Superior Court in Pima County
No. CR20151811001
The Honorable Danelle B. Liwski, Judge

REVIEW GRANTED; RELIEF DENIED

Kristopher A. Carter, St. Johns
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Eppich concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Kristopher Carter seeks review of the trial court’s order summarily denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Carter has not shown such abuse here.

¶2 In 2016, Carter pled guilty to first-degree burglary and attempted aggravated assault. The trial court imposed a four-year prison term for attempted aggravated assault and, for the burglary conviction, suspended the imposition of sentence and imposed a three-year probation term.

¶3 Carter sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no issues to raise under Rule 32. Carter then filed a pro-se petition arguing that, because he was first charged by complaint in justice court, and the grand jury indicted him while his case was pending in justice court, the indictment filed by the state in superior court was “void” and the court thus “did not have power to act on that charging document.” The trial court summarily denied relief, and this petition for review followed.

¶4 On review, Carter repeats his claim that, based on the “priority principle,” the trial court lacked jurisdiction over him because his proceedings began in justice court and were not completed when the grand jury indicted him. The “priority principle” refers to the rule that “where two courts have concurrent jurisdiction, the first acquiring jurisdiction retains it to the exclusion of the other until the case is finally determined.” *Wilson v. Garrett*, 104 Ariz. 57, 59 (1969). But that rule does not apply here because the justice and superior courts did not exercise jurisdiction concurrently.

¶5 Carter was initially charged by complaint in the justice court on April 30, 2015. At his initial appearance that day, the court set release

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conditions and set a preliminary hearing for May 11. On May 11, the state filed an indictment in superior court, which issued a notice of supervening indictment ordering the justice court to transmit the record to the superior court clerk, and the court did so without conducting the scheduled preliminary hearing.

¶6 Because Carter was charged by complaint with felony offenses, the justice court had no jurisdiction over his case except “for the purpose of commencing action and conducting proceedings through preliminary examinations and holding the defendant to answer to the superior court or to discharge the defendant if it appears that there is not probable cause to believe the defendant is guilty of an offense.” A.R.S. § 22-301(A)(2). Although the justice court properly exercised jurisdiction by scheduling a preliminary hearing, that jurisdiction ended when it transferred the case to superior court when the supervening indictment was filed. *Cf. State v. Gonzales*, 111 Ariz. 38, 42 (1974) (“When . . . a preliminary examination [h]as not been held, we can find no error in presenting the case to the grand jury.”). Indeed, once Carter was indicted, there was nothing for the justice court to do because there was no need for a preliminary hearing to determine probable cause. *See* Ariz. Const. art. II, § 30 (permitting felony charge by indictment); A.R.S. § 21-413 (grand jury may return indictment only if “it is convinced that there is probable cause to believe the person under investigation is guilty of [a] public offense”); Ariz. R. Crim. P. 5.4(a) (purpose of preliminary hearing is to determine whether “there is probable cause to believe that an offense has been committed and that the defendant committed it”). Thus, the justice court had no authority except to hold Carter “to answer to the superior court.” § 22-301(A)(2).

¶7 Carter seems to argue the justice court lacked authority to transfer the case and instead was required to proceed with a preliminary hearing because it had not dismissed the case, citing Rule 5.1(a)(1), Ariz. R. Crim. P. As we have explained, the case was effectively dismissed in the justice court when it was transferred to the superior court. Carter has cited no authority suggesting this procedure is defective, and we find none. Indeed, our criminal rules expressly contemplate the procedure, providing that an appearance bond filed in a felony case in justice court will automatically transfer to superior court “after an indictment is filed that alleges the same charges.” Ariz. R. Crim. P. 7.6(a).

¶8 We grant review but deny relief.